IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1566 of 1998
in
SPECIAL CIVIL APPLICATION No 10818 of 1998
with
CIVIL APPLICATION No 12357 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PEPSICO INDIA HOLDINGS LTD

Versus

MOHMED SAYED

Appearance:

1. LETTERS PATENT APPEAL No. 1566 of 1998
MR KS NANAVATY, SR.ADVOCATE with
MR JAY AMIN for SINGHI & BUCH ASSO. for Appellant
MR GM JOSHI for Respondent No. 1
DELETED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.S.GARG)

#. Heard learned counsel for the parties.

#. Appellant-M/s.Pepsico India Holding Ltd., being aggrieved by the order dated 18.12.98 passed in Special Civil Application No.10818 of 1998 by the learned Single Judge, whereunder the order dated 23.11.1998 passed by the authority under the Payment of Wages Act has been confirmed, is before this Court under Clause-15 of the Letters Patent. It would be necessary to note that present is the second round of litigation at the instance of the present appellant. The facts necessary for disposal of the present appeal are that the respondent made an application before the authority constituted under the Payment of Wages Act (referred to as "authority" for the sake of brevity) for certain reliefs against the present appellant. The appellant raised certain issues including that there was no relation of employer and employee and in view of the salary of more than Rs.1600/- being paid to the respondent, the authority would have no jurisdiction in the matter. On an earlier occasion, the contentions were negatived, therefore, the appellant came to this Court in Special Civil Application No. 3930 of 1997, the application was finally disposed of on 10.7.97. The question raised before the Court was that the authority would have no jurisdiction to hear and decide the matter and therefore, the application before the authority was not maintainable. The question of jurisdiction of the authority was also raised, to which, this Court observed that the petitioner (the appellant) will be at liberty to raise the objection as a preliminary objection before the learned Payment of Wages Authority and the authority will decide the same in accordance with law, though it will be for the learned authority to take its own decision as to whether the objections should be decided as a preliminary objection or along with other issues in the matter.

#. After the orders were passed by this Court, application exh. 22 was again placed before the authority.

#. The authority, this time, by its order dated 23.11.98, rejected the application and directed to

proceed further with the matter.

#. The appellant again being aggrieved by the order dated 23.11.98 is before this Court.

#. Submissions of Mr. Nanavaty are two-fold, firstly, that the order passed by the authority is a non-speaking order, therefore, it deserves to be quashed and the matter deserves to be remitted to the authority for reconsideration in accordance with law, and secondly that, as the employee was getting more than Rs.1600/- per month as salary, the authority would have no jurisdiction under the provisions of the Payment of Wages Act.

#. On being asked as to how the appeal against an order passed by the learned Single Judge would be maintainable, it was submitted that the petitioner-appellant had clearly mentioned in the memo of the writ application that it was a petition under Article 226 of the Constitution of India, therefore, any order passed in the said proceeding would be amenable to the appellate jurisdiction of this Court.

#. It was further submitted that a writ of prohibition was sought against the Tribunal, therefore also, an appeal under Clause-15 of the Letters Patent would be maintainable.

#. In our considered opinion, simply by giving a cover of Article 226 to any matter, the same would not become a subject matter for its examination under Article 226 of the Constitution of India. True it is, that a writ of prohibition can be issued by the High Court under Article 226 of the Constitution of India, but in the present matter, we cannot close our eyes to the order dated 10.7.97 passed between the same parties on an earlier occasion in Special Civil Application No. 3930 of 1997. If on the earlier occasion, the petitioner had come to this Court, then, he could have requested the High Court to look into the merits of the matter and decide the matter finally. On the earlier occasion, when this Court refused to interfere in the matter and issued the directions that the question can be raised by the present appellant before the very same Tribunal, then, the Tribunal alone has to decide the issue in accordance with law and at a particular stage as it deems fit. The writ of prohibition under the circumstances cannot be issued.

##. Even otherwise, it would clearly appear that the appellant-petitioner is challenging the correctness, validity and propriety of the order dated 23.11.98 passed

by the authority and this fact would be clear from paragraph-2 of the title of the writ application. The said authority has been duly constituted under a Statute and it exercises its quasi-judicial functions. Realising that position when on the earlier occasion, the High Court directed that question of jurisdiction can be raised before the authority and it would be competent for the authority to decide the issue as a preliminary issue or not, then, under the set of circumstances, we must observe that the order challenged before this Court in Special Civil Application No. 10818 of 1998 is an order, which is passed by the authority exercising quasi-judicial functions. It is trite law that if the learned Single Judge interferes or refuses to interfere in a matter under Article 227 of Constitution of India, then, Letters Patent Appeal under Clause-15 of the Letters Patent would not be maintainable. At this stage, we hold that the appeal is not maintainable.

##. As we were taken to the merits of the matter, we would like to make our comments on the merits also. Submission was that the order is a non-speaking order, reference to certain judgments of the Supreme Court was also made.

##. Present is not a case where rights of the parties are decided at an interlocutory or final stage where a Tribunal or a Court is required to pass an order after giving reasons. In the present matter, by rejecting an application filed by the present appellant, the Court has simply deferred the decision on the issues, which were to be decided as a preliminary issue in accordance with the prayer of the present appellant. The present is not a case where the Tribunal has refused to exercise jurisdiction vested in it by law or has exercised jurisdiction which is not vested in it. The Tribunal has simply rejected the application, rejection simply means that the issues raised by the present appellant would be decided and disposed of finally along with other issues.

##. So far as the question of salary of Rs.1600/- is concerned, we are even not required to interfere in the matter, firstly because, the Tribunal has yet not decided anything nor the learned Single Judge proposed to interfere in the matter.

##. Taking into consideration the totality of the circumstances and in view of the discussion aforesaid, we are of the considered opinion that the appeal is not maintainable and we are not required to interfere in the matter, because, no serious rather any prejudice is

caused or occasioned to the present appellant. The issue is still open and would be disposed of by the authority at an appropriate stage in accordance with law. The appeal is dismissed with costs quantified to Rs.5,000/(Rupees Five Thousand). Rule is discharged.

##. Learned authority is hereby directed to dispose of the matter finally within a period of four months from the date of appearance of the parties.

##. In view of the dismissal of the appeal, the Civil Application No.12357 of 1998 is rejected.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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